



INFORMATION REPORT

COUNCIL MEETING

12/8, 2020

DATE: December 3, 2020

TO: Mayor and Members of the City Council

DEPARTMENT: City Council Public Safety Committee

SUBJECT: City Council Public Safety Committee Review of the 2019 and 2020 Santa Cruz Police Department Cases Interim Independent Police Auditor Activities

APPROVED:

DATE:

Dec. 3, 2020

BACKGROUND: The City Council Public Safety Committee (PSC) held its annual review of the Interim Independent Police Auditor (IIPA) activities on Monday, October 26, 2020 at a Special Closed Session meeting. Committee Members (Councilmember and Committee Chairperson Martine Watkins, Councilmember and Committee Vice Chair Renee Golder, and Councilmember Katherine Beiers) heard a review of the investigations that were completed during 2019 and 2020 by the City's IIPA.

The PSC met with IIPA Mike Gennaco as well as Santa Cruz Police Department (SCPD) representatives, including Internal Affairs Sgt. Scott Garner, Deputy Police Chief Bernie Escalante, and Police Chief Andy Mills, as part of the review process. Assistant to the City Manager Susie O'Hara was also present for the Special Closed Session Zoom meeting as the coordinator of the PSC.

DISCUSSION: The attached memorandum was prepared for the PSC to provide a summary of the IIP activity, including community engagement and dialogue, as well as a summary of the investigations completed since the last auditor report in May 2019. Since May 2019, the City has contracted with a new IIP, Mike Gennaco of the OIR Group. Mr. Gennaco is a nationally recognized expert on law enforcement reform and accountability systems. He was the Chief Attorney of the Office of Independent Review for Los Angeles County and is a founding Principal of the OIR Group. Mr. Gennaco has performed a number of monitoring tasks, audits, and reviews for a Federal judge, special masters, and other governmental entities. He has assisted law enforcement entities throughout the country with constitutional policing issues, critical incident reviews, internal affairs investigations, and design of effective oversight mechanisms. Under his leadership, the OIR Group has become a resource for numerous California cities grappling with officer-involved shootings and other critical incidents in an effort to bridge the gap between the police and the communities that they serve and to utilize those incidents as learning tools. After an extensive Request for Proposals process, Mr. Gennaco was recently selected as the City's Independent Police Auditor.

Given the shift in Independent Police Auditor leadership, the PSC first held a discussion on Mr. Gennaco's experience and process, including his and Chief Mills' strong interest in evolving the Police Auditor's process to be more transparent to the full City Council and public. Given that, and in consultation with the City Attorney's Office, this year's report is provided as an

attachment to this memo, a new practice that is consistent with policy direction of the City Council at its November 24, 2020 meeting with respect to Racial Equity and Social Justice in the Criminal Justice System.

At the October 26, 2020 PSC meeting, the SCPD cases reviewed addressed a range of issues. In total, 13 cases were reviewed by the IIPA. The attached memorandum outlines the context of the investigations, the IIPA's analysis, and the related policy or operational recommendations. As noted in the IIPA's memo, several operational recommendations were made in response to ensure that SCPD staff is admonished of appropriate communication standards and the pitfalls of inappropriate social media postings, complainant records are retained, and investigation subject personnel are further counseled on operational standards.

In addition to the 13 reviewed cases, the IIPA provided analysis of two subjects, a policy change around internal investigations burden of proof and review of a deployment of the SCPD BearCat Rescue Vehicle. With respect to both subjects, the IIPA made recommendations as follows:

Policy Change: Modifying the Burden of Proof in Internal Investigations

Recommendation: SCPD policy should be changed so that a sustained finding is established by a preponderance of the evidence.

Review of Deployment of SCPD BearCat Rescue Vehicle

The IIPA received a complaint from a Santa Cruz resident relating to the deployment of the SCPD's BearCat Rescue Vehicle to a response of a person in a suspected stolen vehicle. Current City Council and SCPD policy reserves deployment of the equipment to certain levels of response. The IIPA evaluated the conditions leading to the deployment of the BearCat Rescue Vehicle under the lens of the policy guidelines and made the following recommendations:

Recommendation: SCPD should ensure that it specifically authorizes any deployment of a K9 by an assisting agency.

Recommendation: SCPD should consider advising its officers of the concerns about using a Taser in stun drive mode when the subject is suspected of having mental issues and its preference of using the Taser in dart mode.

Recommendation: SCPD should consider modifying its policy to disallow distraction strikes to the face.

Recommendation: SCPD should brief the involved sergeant and all of its sergeants on the need to maintain a supervisory role when officers are available to perform any tactical response.

Recommendation: SCPD should modify its policy to prohibit report writers from approving their own reports.

CONCLUSION: The PSC expressed its appreciation to both Mr. Gennaco and the representatives from the SCPD for their work and their analysis of the complaints included in the

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report and in discussion at the PSC meeting. In accepting the 2019 and 2020 Investigatory Reports, the PSC recognizes that the SCPD's Professional Standards Unit, and others involved, administers the work in a proficient and professional manner.

Submitted by:

Susie O'Hara on behalf of the Members of the
Public Safety Committee
Assistant to the City Manager

Attachment: Review of IIPA Activity (December 19, 2019 to October 20, 2020)



October 21, 2020

To: Councilmember Martine Watkins,
Councilmember Katherine Beiers
Councilmember Renee Golder
Public Safety Committee
City of Santa Cruz

cc: Chief Andy Mills, Santa Cruz Police Department

From: Michael Gennaco
Interim Independent Police Auditor (IIPA)
For City of Santa Cruz

Subject: Review of IIPA Activity (December 19, 2019 to October 20, 2020)

Following is an encapsulation of IIPA Activity since the initiation of the interim assignment in December 2019:

Outreach to City and Community

In February 2020, I met with the Chief and Santa Cruz Police Department ("SCPD") Command staff at the Department's executive briefing. I also met with the City Manager and representatives of the local chapter of the ACLU.

Subsequently, I was part of virtual meetings with the NAACP Chapter, UC Santa Cruz as well as the Santa Cruz City chapter of the NAACP.

I have also spoken with activists in the local community with regard to police matters and fielded referrals and complaints regarding SCPD police actions.

Review of SCPD Investigations

I have reviewed the following SCPD internal investigations:

2019-001

This matter involved a ranger and was initiated when fellow rangers came forward to report concerns about his actions including inappropriate display of the Taser on a homeless person and fellow rangers and failure to supervise a trainee. While the most concerning allegation was unproven, the other charges were sustained and discipline was afforded the subject ranger.

In this case, it was commendable that fellow rangers had come forward to report their concerns about their colleague. The investigation was thorough and formal action was taken by the Chief.

I discussed with the Chief the recent reassignment of the rangers to the Police Department and the challenge of transitioning the group to adherence to the higher standards and expectations of SCPD. As detailed in this report, an outsized percentage of complaints involved rangers. I have been advised that there are proposals to “reimagine” the ranger program; however that restructuring results, more work is advisable on ensuring that the rangers receive sufficient supervision and understand the need to adhere to City expectations in the performance of any public safety function.

2019-002

This matter involves an allegation of inappropriate comments by a ranger. The investigation was thorough and did not substantiate the allegations.

2019-005

This matter involves an inappropriate posting on social media by an officer while off duty. During the investigation, the officer was contrite and recognized the inappropriateness of his comments. Remedial action was taken against the officer.

I talked to the Chief about this case and other cases in which inappropriate remarks had been posted by a ranger. I suggested that a general admonition be sent to police employees about the pitfalls of inappropriate postings on social media and he agreed to transmit such a communication. See attached.

2019-010

This matter involves the same ranger discussed in 2019-001 and involved an inappropriate social media posting. The investigation further revealed that the ranger had been previously admonished about another inappropriate posting. The ranger was formally disciplined as a result of the second posting. I spoke to the Chief about the apparent problematic pattern of misconduct by this ranger. The Chief indicated that there had been no further performance issues but that if

additional allegations arose, more serious consequences are in order consistent with principles of progressive discipline.

2019-011

The complainant alleged that she had been illegally arrested for violation of a court restraining order and trespassing. The thorough investigation revealed that the information provided to the arresting officer by a SCPD dispatcher incorrectly identified the complainant as the party subject to the order when, in fact, the complainant was the victim who had obtained the restraining order. The investigation found that while the complainant should not have been arrested for violating the court order there was probable cause to arrest her for trespass. The complainant could not be located for an interview.

I agree with the investigator's legal analysis. However, a teaching moment was lost when there was no counseling and correction of the dispatcher's mistake. That moment should be captured at this juncture and the dispatcher should be counseled on the mistake and the significant implications therein.

Recommendation: The dispatcher who provided erroneous information that led to the complainant being erroneously booked on violating a court order should be counseled about the mistake.

2020-013

This matter involves allegations from the complainant that when he advised rangers that they should not park in a handicapped space, he was treated discourteously and cited when he tried to obtain locator information so that he could complain. The investigation revealed that the rangers had inappropriately parked in a handicapped space, one ranger had inappropriately used profanity in talking with the complainant, and that both rangers did not follow the body worn camera activation policy. The investigation also revealed that the rangers had not advised dispatch when they engaged with the complainant.

One area that was not sufficiently explored was whether the decision to cite the complainant for moving in the path of the ranger vehicle was retaliatory for the complainant calling the rangers out for their illegal parking. That being said and to the Department's credit, the Chief ordered the citation dismissed against the complainant.

The Department identified numerous performance issues with the subject rangers and sustained the bulk of the allegations raised by the complainant and/or identified during the investigation. To its credit, the Department concocted a counseling/training component for the subject rangers as part of its remedial action.

As the Department recognized, the treatment of the 80-year old complainant by the rangers merely because he complained about their decision to park in a handicapped space was not consistent with the tradition of professional law enforcement. In our auditing role, we looked to review the letter to the complainant to ensure that it reflected that concern and that it was

appropriately apologetic to him for the substandard treatment he received. However, we learned that the complainant letter was not retained for the investigative file, so we were unable to review. Best practices dictate that copies of such letters should be retained for the file.

Recommendation: Santa Cruz PD should develop protocols/practices to ensure that copies of complainant letters are retained and included as part of the investigative file.

2020-001

This matter involves allegations from a person who was living in a van that he had been “targeted” by the police. The complainant provided no details and there were no investigative leads to pursue. The complainant later advised that he did not wish the Police Department to pursue the allegations.

2020-002

This matter also involves allegations about homeless “profiling”. The complainant provided no contact information and insufficient investigative leads to pursue.

2020-004

This matter involved allegations that a responding SCPD officer failed to sufficiently investigate an incident in which the complainant was physically ejected from a bar. The investigation found that the officer should have asked clarifying questions of bar staff about how the complainant was removed from the facility and should not have muted his body worn camera during his interview and the officer received remediation for these performance issues.

The investigative report noted that a SCPD detective later conducted follow up of this incident and requested a copy of any surveillance video but was informed that any video had been taped over. Yet, the investigation into the first responding officer did not address the failure of the officer to request and secure any video of the encounter between bar staff and the complainant.

Since the issue was not identified in the initial scope of the investigation, I suggest that the responding officer be further counseled on the failure to initially inquire about any surveillance video and the investigator be counseled on his failure to identify the issue in the administrative investigation.

Recommendation: SCPD should counsel the responding officer on his failure to initially inquire and secure any surveillance video capturing the incident.

Recommendation: SCPD should counsel the investigator regarding his failure to address the initial responding officer’s failure to make inquiry and secure any video of the incident.

2020-006

This concern related to the complainant's inability to access SCPD personnel in order to obtain a vehicle release. SCPD noted that even if personnel had been able to provide the requisite paperwork, she still would not have been able to get to the tow yard in time to obtain the vehicle. Because the allegation was better categorized a service complaint, I concur that no further investigation was necessary.

2020-017

This investigation arose from a complaint that a videographer was followed and eventually approached by two SCPD officers and a sergeant and questioned about his activity. The complainant also alleged that the officers failed to identify themselves when he requested such. The investigation corroborated the complainant's allegations.

As a remedial measure, the sergeant agreed to provide a briefing at roll call to discuss the need for personnel to identify themselves upon request and talked about his encounter and his inappropriate failure to do so. This type of measure is "remedial" in the best sense of the concept and also allows the episode to be turned into a learning experience for the involved sergeant and other personnel.

There were two other aspects of this matter that deserved further discussion. In addition to the failure to identify himself, the complainant also expressed concern that as the encounter was ending, the sergeant advised him to "get a job". This aspect of the complaint was not addressed in the investigation and not subject to any apparent remediation.

Secondly, there was no apparent remediation for the other two officers who also declined to identify themselves. The investigation was too narrowly scoped and did not address these additional performance issues.

Recommendation: The investigator should be advised about the need to ensure that all allegations and performance issues be identified and addressed in the investigation.

Recommendation: The sergeant should further be counseled about his inappropriate comment to the complainant.

Recommendation: The officers should be specifically counseled about their failure to identify themselves when asked.

2020-018

This complainant alleged that illegal construction was occurring in a residence during the COVID pandemic. SCPD worked to ensure that the illegal construction issue was addressed. The matter was resolved satisfactorily.

An attorney alleged that three individuals involved in providing support for the homeless were subject to vandalism with a concrete block being thrown through a window of a van, nails being placed in the vicinity of a car, and needles being found in the vicinity of another car. SCPD conducted an investigation and was not able to develop any leads on the perpetrators nor any evidence that the activity occurred as a result of the individuals work with the homeless. The investigation into the allegations met industry standards.

Policy Change: Modifying the Burden of Proof in Internal Investigations

In reviewing SCPD's Policy Manual, I noticed that current policy requires "clear and convincing evidence" for a sustained finding in an internal investigation rather than a "preponderance of the evidence" which is the standard for most police agencies. I brought this to the Chief's attention and he committed to modifying the standard accordingly.

Recommendation: SCPD policy should be changed so that a sustained finding is established by a preponderance of the evidence.

Review of Deployment of SCPD BearCat Rescue Vehicle

I received a complaint from a Santa Cruz resident relating to the deployment of the Police Department's BearCat Rescue Vehicle to a response to a person in a suspected stolen vehicle. Current City Council and SCPD Department policy reserves deployment of the equipment to certain levels of response:

City Policy:

POLICY TITLE: BEARCAT RESCUE VEHICLE USE POLICY STATEMENT: Use of the vehicle is restricted to those situations where the utility and capability of the vehicle are necessary and when the capabilities of other department vehicles are insufficient for those situations. The vehicle will not be used for routine or day-to-day operations nor in situations where no threat to public or first responder personnel exists. The vehicle will not be used at peaceful First Amendment demonstrations where violence is not threatened or observed. The vehicle will not be used in parades. Public displays of the vehicle will be limited to structured educational programs.

SCPD Policy:

Use of the BearCat rescue vehicle is restricted to those situations where the utility and capability of the vehicle are necessary and when the capabilities of other department vehicles are insufficient for those situations as determined by the chief or police or department designee. This includes, but is not limited to public safety emergencies where life threatening conditions exist, the extraction of persons at risk, the need to insert police, fire, and emergency medical

services into an dangerous environment, ballistic or projectile protection, high-risk vehicle stopes, high-risk warrant service, active shooters, unsecured crime scenes.

In the incident in question, the BearCat was used to block a vehicle which was suspected stolen in order to prevent the occupant of the vehicle from driving away.

In its analysis of the deployment of the rescue vehicle in the specific incident, SCPD noted the following conditions in support of its use:

- 1) Suspect was wanted for felony crime of 10851 VC (Stolen Vehicle). Suspects who steal cars tend to be armed with weapons.
- 2) Suspect was aware of law enforcement presence, barricaded themselves in the vehicle and refused to surrender.
- 3) Other force options were ineffective.
- 4) There was a concern the vehicle would flee, endangering the officers on scene and public. The Rescue Vehicle was able to immobilize the suspect vehicle.
- 5) The "back drop" was a residential neighborhood. The use of the Rescue Vehicle would provide cover to protect the public from rounds fired.
- 6) The Rescue Vehicle allowed officers to safely approach the suspect vehicle without exposing themselves to additional danger.

I agreed that the deployment of the vehicle came within the City and SCPD policy guidelines. However, in reviewing the significant incident, I identified several issues about SCPD decision-making and the deployment of the use of force options.

Regarding the lead up to the extraction of the individual from the car, I observed favorably the care and deliberateness with which responding officers and supervisors approached the individual in the back seat of the vehicle. Particularly impressive was the use of several officers to issue instructions in English and Spanish to the occupant in an attempt to gain voluntary compliance and the extended time (90 minutes) afforded the individual to comply. As noted above, the BearCat rescue vehicle was a component of this calibrated approach; it was placed in the front of the car to prevent it from being able to be driven away.

I did, however, raise questions about the force options deployed as follows:

40 millimeter less lethal rounds were used in an effort to break the heavily tinted windows to afford responding officers a better visual into the interior of the car.¹ While eventually the use of the less lethal rounds was efficacious, their use did present a potential danger to the occupant should a round strike her in the head area.

SCPD attempted to deploy their K9 to enter the vehicle through one of the broken windows. The

¹ The BearCat vehicle also damaged the front of the vehicle when it was positioned to block any exit. It was unclear whether the owner of the vehicle was compensated for the damage SCPD effected on the vehicle during this operation.

dog was reluctant to deploy and its use was unsuccessful in gaining voluntary compliance from the occupant to exit the vehicle. In addition, the police dog received cuts from the broken glass and required veterinary treatment.

Officers fired pepper balls into the interior of the vehicle from the BearCat platform. Pepper balls are projectiles filled with pepper spray. Again, the use of pepper balls proved ineffectual in gaining voluntary compliance from the occupant to exit the vehicle. And because the physical extraction team deployed close in time to their use, the remnant pepper spray compromised responding officers as they moved to take the individual into custody.

Officers then physically extracted the occupant through the window of the vehicle. After being removed and placed on the side of the car, the woman tensed and twisted her arms while repeatedly stating, "I love you, Jesus". At some point a Sheriff's Office K-9 handler on scene advised officers to release their grip on the woman and he then deployed his dog on the woman. It was unclear how insertion of the dog at this point in the episode effectively assisted taking her into custody and was an appropriate force option.

After the dog was retrieved, while officers grabbed the woman's extremities as she lay on the ground, a sergeant then used what he described as "distraction strikes", punching her twice in the face and once in the chin or chest.² The use of distraction strikes to the face area is concerning. While apparently taught in the academy, blows to the face while an individual is being taken into custody raise issues of necessity.

Another officer then used his Taser in stun drive mode two times to the individual's hip area. It is unclear how the use of the Taser as a pain compliance weapon was helpful in bringing her into custody.³ Officers were able to use control holds to handcuff her without further incident. The woman received a laceration to her head and a puncture wound to her ear.

In reviewing SCPD's response, the care and planning in dealing with the subject while she was in the car contrasted significantly to the seemingly uncoordinated force options (K9, strikes to the head, Taser in stun drive) after she was extracted from the vehicle.

As noted above, a sergeant was tactically involved in the extraction of the occupant from the vehicle and delivered the extraction blows discussed above. When, as in this incident, there are officers available to deploy tactically, sergeants should avoid becoming tactically involved so that they can assume a supervisory role over the incident.⁴

² The sergeant indicated he used a closed fist to deliver the distraction strikes. Defensive tactics trainers teach to use palm strikes instead of a closed fist to lessen injury to both the civilian and the officer. The sergeant reported that he received cuts to his knuckles as a result of the incident.

³ Taser training materials do not recommend the repeated use of stun drive mode for individuals displaying signs of mental illness.

⁴ The reports also noted that a lieutenant drove the BearCat to the location. It is unclear why a lieutenant was assigned to perform this role.

Finally, a review of the investigative reports noted that a sergeant both prepared and approved his own report. The whole purpose of having a report approval requirement is defeated if the report writer is allowed to also approve the same report.

After relaying this assessment to the Chief, he asked me to present this incident to a Command Staff briefing. The briefing was well-received.

Recommendation: SCPD should ensure that it specifically authorize any deployment of a K9 by an assisting agency.

Recommendation: SCPD should consider advising its officers of the concerns about using a Taser in stun drive mode when the subject is suspected of having mental issues and its preference of using the Taser in dart mode.

Recommendation: SCPD should consider modifying its policy to disallow distraction strikes to the face.

Recommendation: SCPD should brief the involved sergeant and all of its sergeants on the need to maintain a supervisory role when officers are available to perform any tactical response.

Recommendation: SCPD should modify its policy to prohibit report writers from approving their own reports.

Conclusion

I have been particularly impressed with the Chief's responsiveness and receptiveness to my role as the Independent Police Auditor. Moreover, he recognizes the critical importance of providing access to information and personnel in order to perform our auditing role. The Chief also has recognized how transparency can lead to increased trust and applaud his work in developing the Department's transparency portal.

I look forward to continuing to work with him and his Department.